

**IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
TYLER DIVISION**

CHEETAH OMNI, LLC,

Plaintiff,

vs.

VERIZON SERVICES CORP., et al.

Defendants.

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CIVIL ACTION No. 6:09cv260

**REPORT AND RECOMMENDATION OF
UNITED STATES MAGISTRATE JUDGE**

Before the Court is Defendant Verizon's Motion For Summary Judgment For Non-Infringement (Doc. No. 167). Also before the Court is Plaintiff Cheetah Omni, LLC's Motion For Partial Summary Judgment On The Invalidity Issues Of Anticipation, Obviousness, Indefiniteness And Enablement With Respect To Claim 9 And 11-14 Of U.S. Patent No. 7,522,836 (Doc. No. 169); Motion For Summary Judgment On Verizon's Fourth And Fifth Affirmative Defenses And Counterclaim Counts Five - Seven (Doc. No. 173) and Motion To Dismiss, Or In The Alternative, For Judgment On The Pleadings On, The Verizon Defendants' Fourth And Fifth Affirmative Defenses And Counterclaim Counts Five-Seven (Doc. No. 120).

Having carefully considered the motions, the applicable law, and the arguments of counsel at a hearing held on January 25, 2011, the Court makes the following RECOMMENDATIONS:

- (1) Defendant's Motion For Summary Judgment For Non-Infringement (Doc. No. 167) be denied because there is a genuine issue of material fact.
- (2) Plaintiff Cheetah Omni, LLC's Motion For Partial Summary Judgment On The Invalidity Issues Of Anticipation, Obviousness, Indefiniteness And Enablement With Respect To Claim 9 And 11-14 Of U.S. Patent No. 7,522,836 (Doc. No. 169) be denied because there is a genuine issue of material fact, subject to the stipulation

filed by the parties (Doc. No. 233) withdrawing particular portions of the motion without prejudice.

- (3) Plaintiff Cheetah Omni, LLC's Motion For Summary Judgment On Verizon's Fourth And Fifth Affirmative Defenses And Counterclaim Counts Five - Seven (Doc. No. 173) be denied because there is a genuine issue of material fact.

The Court also recommends that Plaintiff Cheetah Omni, LLC's Motion To Dismiss, Or In The Alternative, For Judgment On The Pleadings On, The Verizon Defendants' Fourth And Fifth Affirmative Defenses And Counterclaim Counts Five-Seven (Doc. No. 120) be denied.

So ORDERED and SIGNED this 2nd day of March, 2011.



JOHN D. LOVE
UNITED STATES MAGISTRATE JUDGE